

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

GARY ALAN TANAKA,

Defendant.

No. 05-cr-621 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

Before the Court is Defendant Gary Tanaka's motion requesting that the Court appoint Daniel M. Perez to represent Tanaka in connection with post-conviction proceedings related to the Court's forfeiture order in this matter. (Doc. No. 916); *see* 18 U.S.C. § 3006A. On August 28, 2018, Tanaka's prior counsel informed the Court that, under the policy of the Federal Defenders of New York, Tanaka was no longer entitled to representation in such post-sentencing proceedings. (Doc. No. 774.) The Court subsequently denied two motions for appointment of counsel – reasoning, based on persuasive caselaw, that the constitutional right to counsel did not extend to substitute asset forfeiture proceedings. (Doc. No. 782 (citing *United States v. Saccoccia*, 564 F.3d 502, 505 (1st Cir. 2009)); Doc. No. 855.) But even when the Court is not *required* to appoint counsel, it certainly may exercise its discretion to do so. *See United States v. Reddick*, 53 F.3d 462, 464 (2d Cir. 1995); *United States v. Birrell*, 482 F.2d 890, 892 (2d Cir. 1973).

In light of recent developments, the Court now finds that appointment of counsel is warranted. Since the Court's last ruling, the Circuit has appointed Perez to represent Tanaka on an appeal that involves some of the same issues now before the Court. (*See* Doc. No. 916 at 8

(citing 18 U.S.C. § 3006A).). Moreover, global settlement discussions are currently underway, and the Court is persuaded that counsel could facilitate such negotiations to the benefit of all parties and the Court. Accordingly, IT IS HEREBY ORDERED THAT Perez is appointed as counsel pursuant to 18 U.S.C. § 3006A for the limited purpose of representing Tanaka during settlement negotiations and related forfeiture proceedings.

SO ORDERED.

Dated: January 11, 2021
New York, New York

RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation

Richard J. Sullivan

Approved: Chief Judge Colleen McMahon